

**Minutes of the March 9, 2005 meeting of the  
Commission on Governmental Ethics and Election Practices  
Held in the Commission's Meeting Room,  
PUC Building, 242 State Street, Augusta, Maine**

Present: Chair pro tempore Andrew Ketterer; Hon. Terrance MacTaggart; Hon. James Donnelly (by telephone); Hon. Jean Ginn Marvin (by telephone) Staff: Executive Director Jonathan Wayne; Counsel Phyllis Gardiner.

At 10:15 a.m., Chair Ketterer convened the meeting. The Commission considered the following items:

Agenda Item #1 – Ratification of minutes of October 28, 2004 meeting

Mr. MacTaggart moved, Mr. Donnelly seconded, and the Commission voted unanimously (4-0) to adopt the minutes.

Due to various requests, subsequent items were taken out of order.

Agenda Item #16 – Late Filing Penalty/Penobscot County Democratic Committee

The director indicated that the treasurer of the PCDC, Kurt A. Keef, was unaware that his committee had to file a 6-day pre-general report. Mr. Keef had requested a waiver of the penalty. The director explained that the statutory penalty was capped at a maximum of \$500; otherwise the penalty would be \$3,390.55.

Kurt Keef, the treasurer of Penobscot County Democratic Committee, took the floor. He explained that he knew he had to file two reports every year, and that up until now he didn't realize he was required to file a report in October. When he was notified of the situation, he promptly filled the report. The director informed the commission that it was the state party committee's responsibility to inform local and county committees about the filing deadlines and requirements. The director felt that this was inadequate, and that in future elections the staff should take a more hands on role in order to prevent more situations like this one. The staff recommendation was to assess a \$500 penalty. Ms. Ginn Marvin asked about the \$500 cap. The director explained how the statutory penalty formula worked, and then explained that the law said that the penalty for a late filing for a party committee cannot exceed \$500.

Ms. Ginn Marvin moved, Mr. MacTaggart seconded, and the Commission voted unanimously (4-0) to adopt the staff recommendation and to assess a \$500 penalty.

Agenda Item # 18 – Late Independent Expenditures and 24-Hour Reports/Lincoln County Democratic Committee

The director explained that there were two violations. The first was a failure to file an independent expenditure report on time. The director explained that this was serious because candidates received matching funds late as a result of the late filing. Joan Kierstead, the treasurer at the time these reports were due, explained in writing to the Commission staff that the reason why the reports weren't filed on time was because proper notification was never received. The staff recommendation for this violation was to assess the routine statutory penalty of \$426.49 and an additional penalty of \$500 because matching funds were delayed. The additional penalty was consistent with an earlier Commission ruling made in November 2004 against the Business For Responsibility PAC, who had committed a similar violation. The director stressed the importance of relaying the seriousness of having matching funds be delayed due to late filings of independent expenditure reports. In addition, two 24-hour reports were one day late. The staff recommendation was to assess the statutory penalty of \$47.50.

Tim Nason, chair of the Lincoln County Democratic Committee, took the floor. He stated that, with regards to the independent expenditure reports, the treasurer was unaware of the filing requirement. He said that the state party had not told them about the requirement. He also brought up an email sent to all county chairs about the various filing requirements. Mr. Nason pointed out that this email was not sent to any county treasurers. The former chair received the email, notified Ms. Kierstead as to the requirements, after which Ms. Kierstead promptly filed the independent expenditure report. With regards to the late 24-hour reports, Mr. Nason said that Ms. Kierstead lived in Jefferson and did not have access to a fax machine nor had access to a notary, which was required for the report. He defended her efforts to comply with the law once she knew what it was, and expressed surprise that the treasurer was not informed about the filing requirements, and that he felt this was a mitigating circumstance. Mr. Nason also said that Ms. Kierstead did report the expenditures the day the expenditure was made via email. After the email notification went out, Ms. Kierstead sent out the written reports.

Mr. Ketterer said that independent expenditure reports were taken seriously by the Commission, and that one of the most common complaints was that matching funds were released at the last minute and that therefore the money couldn't be used effectively. Mr. Ketterer also expressed his understanding and sympathy for the difficulties in making sure people within a county committee are informed of all the relevant information.

Mr. Donnelly moved, Mr. MacTaggart seconded, and the Commission voted unanimously (4-0) to adopt the staff recommendation and assess the statutory penalty of \$426.29 for the late independent expenditure report and the additional penalty of \$500 for the delay in awarding matching funds.

Ms. Ginn Marvin moved, Mr. MacTaggart seconded, and the Commission voted unanimously (4-0) to adopt the staff recommendation and assess the statutory penalty of

\$47.50 for the late 24-Hour reports. Mr. Nason said that there were training seminars being planned to prevent this mistake from happening in the future.

Items were then taken back in order.

#### Agenda Item #2 – Request Regarding 2002 Report by People for a Strong Maine Economy

The director said that Richard Pelletier had sent in a spreadsheet containing the names of 100 election-day workers from 2002, which had been requested by the Commission. The director said that he would review the information to make sure it met the reporting requirements, and that he would get back to the Commission at a later date. The Commission tabled the item.

#### Agenda Item #3 – Policy Issue: Last Minute Expenditures

The director mentioned two aspects of this item. The first was encouraging a new policy involving education on last minute expenditures. The other was to discuss with the Commission three reports that may have been filed late. The director said that those reports fell into grey areas, and he wanted to get the Commission's views on the reports before moving ahead with them. The director explained that PAC's and party committees were filing their independent expenditure reports close to the general election so that matching funds were released in the last week, which in many cases was too late to help the candidate receiving the funds. The director reported that there were 70 independent expenditure reports that were filed for the 2004 election, and of those 58 were filed within the last eight days of the election. The director explained that while there were legitimate reasons for filing IE reports late, there was growing concern among many people that the timing of these reports was deliberate. He said that, in the future, the staff would be focusing more on education of PACs and party committees about how an obligation counts as an expenditure. The director also mentioned the possibility of changing the IE rules to try and prevent last minute expenditures, but that it was difficult to make such a change and have it be constitutional without infringing on 1<sup>st</sup> amendment rights. He said that he didn't think it was possible to require PAC's and party committees to file by a certain deadline. However he did come up with an idea that involved PAC's and party committees answering questions about various expenditures 8 days before the election. The director said that he felt that PAC's and party committees would probably be cooperative if presented with a deadline. Another idea was to distribute public funds based on projected expenditures, but that idea didn't seem too attractive because invariably the amount reported and the amount spent would be different, which would create problems in giving out the correct amount of matching funds.

Mr. Ketterer said this was a tough issue. He said that many groups feel that there is an advantage in spending money late in the election. He also stated that he thought most people didn't understand that an obligation counts as an expenditure. Mr. Ketterer thought the 8-day question proposal was attractive, because it would probably generate some answers. Ms. Ginn Marvin agreed that people spend money at the last minute on

purpose. Mr. MacTaggart also agreed that these expenditures don't happen by accident, and that future education would be a good idea. Ms. Gardiner expressed concern over defending a legal requirement requiring PAC's and party committees to spend their money by the last 8 days. She said that having a different reporting requirement within those last 8 days would work better. Mr. Ketterer said that telling candidates that if they make expenditures within the last eight days, their reporting requirements will increase, which is part of the law anyways, should not go against the 1<sup>st</sup> amendment. Ms. Gardiner agreed. The director indicated that this change could be made by rule-making or by statutory changes. After a brief discussion, it was decided to introduce this change in the upcoming rule making.

The director then brought up the second item, which was potential late filing by three PAC's/party committees. The director said that he had received a letter and other correspondence asking about the timing of the IE reports in relation to when people received the various mailings. The director asked of the Commission if they wanted to look at this issue at a later meeting. The Commission agreed to review that issue at a later meeting

#### Agenda Item #4 – Proposed Changes to Commission Bill

The director brought up a few changes he proposed to the Commission Bill. One was allowing changes to be made to the reporting forms via rule making as opposed to requiring approval from the Legislature. Arn Pearson took the floor, and commented that previously the Commission had total discretion as to how the forms were made. Ms. Gardiner agreed. The Commission agreed that making changes to the forms should be made routine technical. The second item was the aforementioned IE expenditure discussed in the previous agenda item. The last change proposed that if someone filed a late report that caused delayed matching funds, then a maximum penalty of \$10,000 could be assessed. If the violation is caused by a PAC or a state party committee, then the people primarily responsible for the report in the organization could also be fined. This was to make sure there was some personal responsibility. However, this fine would be used only in extreme circumstances. Mr. MacTaggart asked exactly when this fine would be assessed. The director replied that he hadn't crafted language yet that explicitly laid out when the Commission could assess the fine. He also explained that this penalty should be considered a deterrent as opposed to a penalty to be used often. Mr. Donnelly said that while he wanted to hold people accountable, he didn't want to scare people off from participating. Mr. Ketterer said that he was also concerned about people being too scared to participate. The Commission decided not to pursue this issue.

#### Agenda Item #5 – Proposed Changes to Expenditure Guidelines

The director stated that the staff proposed making changes to the official expenditure guidelines for MCEA candidates in the 2006 elections. One of the major changes would be that MCEA funds could not be used to pay an entry fee for an event sponsored by a party committee or charity, or place an ad in a publication unless it would directly benefit a candidate's campaign. He mentioned a case where a candidate had put an ad in his

party's newsletter, and there had been some confusion on this matter. Mr. Ketterer pointed out that MCEA candidates couldn't use personal funds for an ad that benefits their campaign. The Commission didn't have any issues with the proposed language. The Commission also decided to let the Legislature know about the proposed expenditure changes before making an official decision on them.

At this point, Mr. Ketterer announced that all other items on the agenda were tabled due to inclement weather/absences, and that the Commission would now consider other items not listed on the agenda.

### Other

The director indicted that the governor's office had received the list of three names which was required to select a person to fill former Commission member Mavoureen Thompson's seat. The director also expressed hope that a replacement for James Donnelly would happen soon.

The other item was the bill brought by Sen. Ken Gagnon limiting political activity by Commission members. The director said that the language in the bill was broad, and there could be some limitations. Mr. Donnelly said that it was important that the bill clearly states what a Commission member can and cannot do. He also thought that this bill could limit future choices as to who may want to run or be able to serve as a Commission member. Mr. Ketterer disagreed with the bill. Ms. Ginn Marvin expressed her disagreement over restricting national political activities. She understood why limiting the Commission's political involvement in house, senate and gubernatorial races in Maine was important but she didn't think further restrictions were necessary. Mr. Ketterer mentioned an example where he would support candidates for the office of Attorney General in other states and would be restricted in terms of fundraising or supporting those people. Mr. MacTaggart stated that he was against limiting the ability to engage in political activity so long as it didn't create a conflict of interest. Mr. Ketterer and Ms. Ginn Marvin expressed their intentions that if the bill passed in its current form, both of them would resign. Mr. Donnelly suggested proposing language that would still adhere to the intent of the bill while addressing the Commission members' concerns. Mr. Ketterer suggested sending a letter highlighting the concerns various Commission members had over this bill. The Commission decided that the director would come up with a proposed amendment to the bill.

There being no further business, the Commission adjourned.

**PART II**  
**Minutes of the March 9, 2005 meeting of the**  
**Commission on Governmental Ethics and Election Practices**  
**Held in the Commission's Meeting Room,**  
**PUC Building, 242 State Street, Augusta, Maine**

Present: Chair James Donnelly; Hon. Jean Ginn Marvin; Staff: Executive Director Jonathan Wayne; Counsel Phyllis Gardiner.

Note: Due to the fact that this was a public comments hearing, and no vote was being taken, a quorum was not required.

At 9:10 a.m., Chair Donnelly convened the meeting. Mr. Donnelly stated that two of the commission members were unable to attend, and that the new commission member, Michael Bigos, was not confirmed yet. However, all three would be receiving recordings of this meeting so that the entire Commission would be up to date.

Arn Pearson, Director of the Maine Citizen's Leadership Fund, took the floor. He stated that, in general, he felt the Commission staff had done an excellent job with the rules, and that overall he supported the rule changes. He also stated that his group would be submitting written comments as well. He brought up Chapter 1, Section 6-Contributions, and said that in Subsection 2, sub paragraph 3 did a much better job at explaining what an in-kind contribution was. He also stated that sub paragraph 4, which clarified when something is counted as an in-kind contribution, was very helpful. Mr. Pearson expressed his differences with sub paragraph 6, which he felt exceeded the scope of rule making authority, that it differed from traditional interpretation of statute, and that recounts should be dealt with in statutes. He felt that if the Commission did not treat money raised for recounts as contributions, there would be no way to find out where the money came from. He then talked about Section 7-Expenditures, Subsection 3A. He said that it would be worthwhile if the Commission clarifies multi-expenditure mailings. He suggested that reserving print space for broadcast advertising should be added to the list of expenditures requiring disclosure.

Mr. Donnelly asked about how the Commission would handle obligations and matching funds. Mr. Pearson said it was a good question, and that it was a tricky issue to work out. Mr. Donnelly thought this would become very important for the 2006 gubernatorial race. Mr. Pearson said that there had been some discussion as to proposing a rule that would prevent people from obligating more money than they had to spend at the time of the obligation, but that as of now the issue was undecided.

Mr. Pearson mentioned sub-paragraph 8, and suggested striking the last sentence because he felt it would hurt more than help in terms of trying to list what is not acceptable. Sub paragraph C he thought was very important for future guidance. He then talked about Section 10-Independent Expenditures. Sub section 3A, he noted that the reporting schedule mirrors the PAC deadlines, and that it would be easier for a PAC to do two

reports at the same time.. He also noted that if someone made an independent expenditure in September, they wouldn't have to report it until 12 days before the election. This could allow someone to forget that they made the expenditure back in September and hence fail to report it. In Sub sections 4a-c. Mr. Pearson felt that the examples given should be struck and that instead a guidance memo should be sent which lists the examples. He explained that this was for simplicity and to help others understand the rules as well as being able to focus on the examples given. Mr. Donnelly stated that he felt it would be difficult trying to measure content with independent expenditures, but that his opinion was not the prevailing one when this issue was voted on. Mr. Pearson replied he could understand the approach the Commission voted to take but that the effort necessary to come to a determination would be great. Mr. Pearson also stated that calculating the exact cost of various ads would be difficult at best. Subsection 5b was another point which Mr. Pearson thought would be better as a guidance memo instead of putting it into rule. In particular Mr. Pearson mentioned the sub paragraph 2 as a potential conflict. He also had issues with subsection 1 and the 25 candidate listing limit, and said that he felt that it went beyond rule making authority.

Mr. Pearson asked why getting a loan is a violation of the seed money restrictions. Mr. Donnelly replied that the Commission, based on an actual situation in the 2004 election, did not want to be in a situation where a candidate takes a loan expecting to repay the loan with seed money, and then doesn't have enough money to pay back the loan and having to deal with the consequences. Mr. Pearson stated that Subsection 5 and 6, which gave the Commission the ability to look beyond the literal meaning of the language, was important for correct decisions and to prevent people from manipulating the rules. Chapter 3 subsection 6 paragraph 4 was important because it clarified that you can't use clean election funds to resell items for personal profit.

Mr. Donnelly commended Ms. Ginn Marvin in her effort and dedication to come and attend the public hearing in light of her serious foot injury.

Abby Holman, from the Alliance for Maine's Future, took the floor. She stated that the staff did an excellent job with the revised rules. Chapter 1, section 1, she believed the definitions of "member" and "association" were not clear. A "member" is someone who pays annually to an organization, and she believed that the definition was too narrow. Many associations that have members do not require dues to be paid, so she believed that the definition should be changed to include expressed clear interest. She also stated that groups shouldn't be able to claim extra people as being members of their organization. In Section 7, subsection 3-Expenditures, she had concerns over the reporting of an independent expenditure based on an obligation, only to find out after the fact the actual cost of the expenditure was different then what was reported. Ms. Ginn Marvin asked why a candidate or group couldn't request an actual invoice from a vendor at the time of the agreement. Ms. Holman said it could delay payment, as well as cause issues for the buyer and the vendor. In section 10, Subsection 3, she expressed her concerns about reporting minimal amounts over the \$100 threshold, such as 65 cents or \$10 dollars. She also requested examples of these situations, and stated that independent expenditures really needed examples so that more people could understand how to follow the rules and

laws. In Subsection 4, she felt that it needed to be clear that this rule only applies if it was an independent expenditure. She also expressed her opinion that trying to figure out the exact value of an ad or independent expenditure would be extremely difficult, based on value of picture/text, geographic distribution, etc. Ms. Holman mentioned sub paragraph 2 involving conversations between two people as being potentially difficult to enforce. She felt that taking out examples and putting them into a guidance memo didn't necessarily help people to understand, and that she would prefer them to be all in one place. Ms. Holman mentioned Section 5c and asked how you would report when you go over \$100 in aggregate. Ms. Holman also stated that Section 5f would cause double reporting.

Tim Belcher, from Maine State Employer's Association, took the floor. He stated that the staff did a great job at clarifying certain definitions and rules. He noted that the definition of a member, in his opinion, allowed someone to be considered a member even if they didn't pay dues, because under subsection c if they have a significant organizational attachment, then they are considered a member. Mr. Belcher said it was important to have some kind of rule as to who can be considered a member of an entity or organization. He expressed his concerns under Section 10 subsection 5 b1 involving voter records and lists as well as conversations between two people.

Mr. Donnelly announced that the staff would be receiving written comments until 5:00 PM on April 4<sup>th</sup>, so if anyone had something to contribute, they should feel free to do so.

With no further business, the Commission adjourned.